

STATE OF MICHIGAN
COURT OF APPEALS

BEAR CREEK VILLAGE ASSOCIATION,

Plaintiff-Appellee,

v

DANIEL J. BAJOR,

Defendant-Appellant,

and

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.,

Defendant.

UNPUBLISHED

January 16, 2014

No. 312346

Macomb Circuit Court

LC No. 2011-003285-CH

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendant Daniel Bajor (“defendant”), proceeding *in propria persona*, appeals as of right from the trial court’s order granting plaintiff a default judgment against defendant in this debt recovery and lien foreclosure action. Because the trial court did not abuse its discretion in granting the default judgment, we affirm.

Defendant owns a condominium unit in plaintiff’s condominium complex. Plaintiff filed this action after defendant failed to pay his share of expenses assessed by plaintiff. Plaintiff filed a motion for summary disposition, and the trial court determined that defendant was liable for the assessments but did not grant a judgment for plaintiff because the amount owed was disputed. In the meantime, the trial court scheduled a settlement conference for June 20, 2012. Defendant failed to appear for the conference, but he did call the court to report car trouble. The trial court rescheduled the settlement conference for July 25. Defendant again failed to appear but this time did not call to explain his absence. Plaintiff then moved for entry of a default and default judgment. Defendant responded to the motion by explaining that he was unable to appear for the conference due to transportation problems and that he would not be attending “unless driven by Plaintiff’s counsel.” Defendant failed to appear for the motion hearing, and the trial court granted the motion.

The trial court's decision to enter a default judgment against a party is reviewed for an abuse of discretion. *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011). An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

"A trial court's authority to enter a default or a default judgment against a party must fall within the parameters of the authority conferred under the court rules." *Henry v Prusak*, 229 Mich App 162, 168; 582 NW2d 193 (1998). The trial court defaulted defendant, under MCR 2.401(G), for not attending a pretrial conference. MCR 2.401(G)(1) provides that a party's failure to attend a scheduled conference "may constitute a default . . . or a ground for dismissal." However,

[t]he court shall excuse a failure to attend a conference or to participate as directed by the court, and shall enter a just order other than one of default or dismissal, if the court finds that

(a) entry of an order of default or dismissal would cause manifest injustice; or

(b) the failure was not due to the culpable negligence of the party or the party's attorney. [MCR 2.401(G)(2).]

"Culpable negligence" refers to conduct that is willful, intentional, reckless, or done in bad faith, as opposed to that which is due to ordinary negligence or to an honest mistake or to circumstances beyond one's control. See *Great Lakes Realty Corp v Peters*, 336 Mich 325, 333-334; 57 NW2d 901 (1953); *Bowens v Aftermath Entertainment*, 254 F Supp 2d 629, 645 (ED Mich, 2003). Defendant claims that he was not culpable for missing the various court proceedings because he was not to blame for his car trouble. However, defendant fails to appreciate that after his car problems arose, he did nothing other than request plaintiff's counsel to drive him to the proceedings. Defendant offers no explanation for his failure to make arrangements that did not involve imposing on opposing counsel, such as taking a bus or a cab, or calling a neighbor, friend, or relative for assistance. Defendant also states that he asked plaintiff's counsel to arrange a telephone conference at the court if he would not provide transportation, but, notably, defendant did not make such a request to the court himself or offer any explanation regarding why he did not direct the request to the court. See MCR 2.402(B) (the court may use communication equipment for a hearing on request of a party). Further, defendant has not shown that entry of the default and default judgment resulted in manifest injustice. Defendant's liability for the unpaid assessments had already been established, and the only issue to be resolved was the amount owed. Plaintiff provided documentation satisfactory to the trial court that established the amount owed and defendant does not dispute that amount. He claims that foreclosure is a "life-altering experience" that should not be decided by default, but the order only provided for foreclosure of the lien if defendant failed to pay the amount owed. Further, defendant may have been able to avoid the possibility of foreclosure altogether if he had appeared for the settlement conference. Under the circumstances, the trial court did not abuse its discretion in granting plaintiff's motion.

Affirmed. Plaintiff, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ William B. Murphy

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood